

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.983 OF 1989

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

NARESH STORES
VERSUS
DIRECTOR OF CIVIL SUPPLIES & ANR.

Appearance:

MR BR KYADA for petitioner
MR MA BUKHARI for respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 5/09/2000

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. The petitioner was given licence for sale of kerosene and he was carrying on his business under the name and style of Naresh Stores. His licence came to be cancelled under the order dated 22nd September, 1987, annexure-C of the Deputy Controller of Food and Civil Supplies, Ahmedabad. Against this order, the petitioner filed appeal before the Controller of Food and Civil Supplies, Ahmedabad city which came to be rejected under the order dated 7.12.87. The petitioner, against that order, approached the State Government by filing revision application but that too has also been dismissed under the order annexure-D at page 41 dated 4.1.88. Hence this special civil application.

#. This matter has been placed for preliminary hearing on 22.6.89 in the court on which date notice was issued to the respondents. Reply to the special civil application has not been filed by respondents before 12th July, 1989, the day on which this matter was admitted and interim relief in terms of paragraph 8(C) has been granted. Paragraph 8(C) of the special civil application reads as under:

Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to stay the operation of the impugned orders at annexures 'C' and 'D' dated 22nd September, 1987 and 7th December, 1987 respectively and direct the respondents to give supply of the kerosene on any condition which deemed fit by them.

Under the interim order, the implementation and operation of the orders impugned in this special civil application has been stayed, meaning thereby, the petitioner is continuing to carry on his business under the licence.

#. Reply to the special civil application has been filed on 19th August, 1989. The petitioner has not filed any rejoinder thereto as it is not on the record nor it is the statement of learned counsel for the petitioner that rejoinder to the same has been filed. In the reply filed by respondent No.2, preliminary objection has been raised that this petition deserves to be dismissed only on the ground that the petitioner already filed civil suit No.1/88 in the District Court, Ahmedabad (Rural) at Narol challenging these very orders which are challenged before this court. It is submitted that once the petitioner has availed the remedy of suit, he cannot be permitted to avail of parallel remedy of filing special civil application. In the reply, it has further been stated

that the petitioner has concealed this important fact from this court. In the special civil application, the petitioner has not stated that he has filed the civil suit against these very orders. From the reply to the special civil application, it further appears that the suit has been filed on 11.1.88. In the suit, prayer made for grant of interim relief was not accepted. The suit is pending. Further it is stated that as material facts have been suppressed by petitioner, only on this ground, this petition be dismissed. In paragraph-7 of the reply to the special civil application, it is given out that from time to time, the petitioner has been penalized for committing irregularities and illegalities in doing the business of kerosene under the licence.

#. Rejoinder to the reply has not been filed and as such all the averments made in the reply stand uncontroverted. This special civil application has been filed by petitioner in this court on 2.2.89. Leaving apart whether during pendency of appeal and revision application, the petitioner has been protected by grant of interim relief by appellate and revisional authority or not, it is a fact that after decision of the matter by the State Government in revision application on 4.1.88, there was no interim relief in favour of petitioner. The suit has been filed on 11.1.88 and civil court has also not granted interim relief to the petitioner. This court has granted interim relief to the petitioner on 12.7.89. So there was no stay order in favour of petitioner for a period of more than one year and six months.

#. In the special civil application, the petitioner has not stated all these facts of filing the suit and in which interim relief has not been granted. In case these facts would have been disclosed by petitioner in the special civil application, this court would not have even admitted this petition what to say to grant ad-interim relief in his favour. The State Government is also responsible to certain extent for such a situation and which is clearly borne out from the fact that if these facts would have been brought to the notice of this court on receipt of notice given to them, the matter would not have been admitted and interim relief would not have been granted. Be that as it may, it is a serious and material concealment of fact. In fact, the petitioner, by concealing this fact, not only was able to get the matter admitted and get interim relief in his favour, but in fact, it is clearly a case of abuse of the process of the court. I find sufficient merits in the objections raised in the reply that the petitioner cannot be permitted to simultaneously avail of two remedies. Once the

petitioner has chosen to avail of the remedy of suit and that remedy has been availed of it is not permissible to the petitioner to file this petition. This petition has been filed with the clear object and purpose of getting interim relief from this court which he failed to get from the civil court. Concealment of fact of filing of the suit is otherwise a very very important and relevant in this context also. When the suit is pending, I do not consider it to be appropriate to give any finding on merits of the matter, but the petitioner is not a laymen and this concealment of fact by this person has to be taken seriously by the court. It is not the first case but everyday such types of cases are coming up before this court. In the State litigants are free to conceal any fact from the court. Concealment of every fact may not be serious but concealment of fact which is very relevant and material to the controversy is certainly very serious and in fact, by making that concealment or suppression of fact when favourable order has been obtained by the litigant, it may be a case of abuse of the process of the court and contempt of the court. In this case, this fact of filing the suit is not irrelevant fact. It is a very very relevant and material fact to be disclosed in this special civil application. In the suit, the petitioner has challenged these very orders which are subject matter of challenge in this special civil application. When the petitioner failed to get interim relief from the civil court, it is clear that this special civil application has been filed for the purpose of getting interim relief. In case, this fact would have been disclosed there are all the possibilities of even not entertaining of this petition what to say to issue notice to the other side and grant interim relief in favour of petitioner. This petition deserves to be dismissed only on the ground that the petitioner has suppressed and concealed very material and relevant facts from this court as well as he has availed of parallel remedy.

#. As a result of aforesaid discussions, this special civil application fails and the same is dismissed. Rule discharged. It is a case where exemplary costs are to be imposed on the petitioner rather than to direct for initiation of contempt proceedings. The petitioner is directed to pay Rs.10,000/= as costs of this petition to the State of Gujarat. This costs to be paid by petitioner within a period of one month from the receipt of writ of this order. The office is directed to send writ of this order forthwith to the petitioner. The petitioner is further directed to produce receipt of deposit of this amount in the court. The office is

directed to place this matter in the court on 13.10.2000
with the report whether this order is complied with or
not by the petitioner.

.....
(sunil)